



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)  
DW Dec-05

MCNEES, WALLACE & NURICK LLC  
100 PINE STREET  
P.O. BOX 1166  
HARRISBURG PA 17108-1166

**COPY MAILED**

**DEC 19 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Kantor et al. :  
Application No. 10/779,366 :  
Filed: 13 February, 2004 :  
Atty Dcket No. GEN-001-97 DIV-B :

ON PETITION

This is a decision on the petition, styled under 37 CFR 1.57, which is treated as a petition under 37 CFR 1.53, filed on 21 October, 2005, requesting that the above-identified application be accorded a filing date of 13 February, 2004, with three (3) sheets of drawings as a part of the original disclosure.

The petition is granted.

The application was filed on 13 February, 2004. However, on 19 August, 2005, Initial Patent Examination Division mailed a "Notice Of Incomplete Nonprovisional Application" stating that the application had not been accorded a filing date because the application was deposited without drawings. 35 U.S.C. § 113 (first sentence) requires a drawings "where necessary for the understanding of the subject matter sought to be patented."

In response, on 21 October, 2005, the present petition was filed, accompanied by, *inter alia*, three (3) sheets of drawings. Petitioners assert that the above-identified application is a continuation of Application No. 10/279,607, and that the prior application was incorporated by reference on the transmittal letter. Petitioners further aver that the three (3) sheets of drawings filed with the present petition are a copy of the drawings from the above-referenced, prior-filed application.

A search of the official file reveals that on 13 February, 2004, a "Utility Patent Application Transmittal" letter was filed which states that the application is a continuation of application No. 10/279,607, and that the entire disclosure from the prior application is incorporated by reference.

The Office is construing the petition to mean that the drawings supplied on 21 October, 2005, constitute a copy of the drawings

supplied with the prior application. Petitioners **must** inform the Office if this is not a correct interpretation.

Based on the incorporation by reference statement appearing in the transmittal letter filed with the application papers, stating that the disclosure of the prior application (identified as Application No. 10/279,607) was incorporated by reference in the present application on 13 February, 2004, it appears that three (3) sheets of drawings were present in the Office on 13 February, 2003, albeit in the file of another application, i.e., Application No. 10/279,607. Therefore, on petition, the application may be accorded the requested filing date.

The application will be processed and examined using the copy of the three (3) sheets of drawings supplied on 21 October, 2005, as a part of the original disclosure.

The copies of the other application papers supplied with the present petition will not be used for processing or examination, but will be retained in the application file.

The petition is granted. Since the petition was required to accord the requested filing date, the petition fee of \$400.00 will not be refunded.

Of course, the primary examiner is expected to compare the three (3) sheets of drawings supplied on 21 October, 2005, to the disclosure of prior application No. 10/279,607 in order to verify that the three (3) sheets of drawings are, in fact, part of the disclosure of the prior application.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 13 February, 2004, using the application papers filed on that date and the three (3) sheets of drawings supplied with the present petition, and for an indication in Office records that three (3) sheets of drawings were present on filing.

Telephone inquiries specific to this matter should be directed to the undersigned at 571-272-3231.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions